

## **9. SUPPLY CHAIN MANAGEMENT POLICY**

**Council** resolves in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003) and the Municipal Finance Management Act: Municipal Supply Chain Management Regulations 27636 of 2005,, to adopt the following proposal as the Supply Chain Management Policy of **Modimolle Local Municipality**.

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## **DEFINITIONS**

1. In this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

**“Competitive bidding process”** means a competitive bidding process referred to in paragraph 12 (1) (d) of this Policy;

**“Competitive bid”** means a bid in terms of a competitive bidding process;

**“Final award”**, in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

**“Formal written price quotation”** means quotations referred to in paragraph 12 (1) (c) of this Policy;

**“In the service of the state”** means to be –

- (a) A member of –
  - (i) Any municipal council;
  - (ii) Any provincial legislature; or
  - (iii) The National Assembly or the National Council of Provinces;
- (b) A member of the board of directors of any municipal entity;
- (c) An official of any municipality or municipal entity;
- (d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature;

**“long term contract”** means a contract with a duration period exceeding one year;

**“list of accredited prospective providers”** means the list of accredited prospective providers which the **municipality** must keep in terms of paragraph 14 of this policy;

**“other applicable legislation”** means any other legislation applicable to municipal supply chain management, including –

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

**“Treasury guidelines”** means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;

**“the Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**“the Minister”** means the Minister of Finance;

**“the Regulations”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005;

**“written or verbal quotations”** means quotations referred to in paragraph 12(1) (b) of this Policy.

## **CHAPTER 1**

### **IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

#### **Supply chain management policy**

2. (1) All officials and other role players in the supply chain management system of the **municipality**
  - (2) must implement this Policy in a way that –
    - (a) gives effect to –
      - (i) section 217 of the Constitution; and
      - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
    - (b) is fair, equitable, transparent, competitive and cost effective;
    - (c) complies with –
      - (i) the Regulations; and
      - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
    - (d) is consistent with other applicable legislation;
    - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
    - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
  - (3) This Policy applies when the **municipality**
    - (a) procures goods or services;
    - (b) disposes goods no longer needed;
    - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
    - (d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
  - (4) This Policy, except where provided otherwise, does not apply in respect of:
    - (a) The procurement of goods and services contemplated in section 110(2) of the Act, including –
      - (i) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
      - (ii) Electricity from Eskom or another public entity, another municipality or a municipal entity.

- (b) Any contract relating to the publication of notices and advertising by the municipality e.g. Advertising from Print and Electronic Media.
- (c) The unskilled labour component of the Municipality's LLPP (Local Labour Promotion Projects)
- (d) The acquisition of services of attorneys and advocates subject that the acquisition of such Services to be dealt with in terms of Municipality's Delegation of Powers and Duties, as amended from time to time and any Bargaining Council Agreement on Disciplinary Procedures;

**Amendment of the supply chain management policy**

3. (1) The accounting officer must –
  - (a) at least annually review the implementation of this Policy; and
  - (b) When the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the **council**.
- (2) If the accounting officer submits proposed Amendments to the **council** that differs from the model policy issued by the National Treasury, the accounting officer must –
  - (a) ensure that such proposed amendments comply with the Regulations; and
  - (b) Report any deviation from the model Policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

**Delegation of supply chain management powers and duties**

4. (1) The **council** hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –
  - (a) To discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) This Policy;
  - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
  - (d) To comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).

- (3) The accounting officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of **the municipality** or to a committee which is not exclusively composed of officials of the **municipality**.
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

#### **Sub-delegations**

- 5. (1) The accounting officer may in terms of section 79 or 106 of the Act any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.
- (2) The power to make a final award –
  - (a) Above R10 million (VAT included) shall not be sub delegated by the accounting officer;
  - (b) Above R2 million (VAT included), but not exceeding R10 million (VAT included), shall be sub delegated but only to –
    - (i) A bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (c) Not exceeding R2 million (VAT included) shall be sub delegated to –
    - (i) The Chief Financial Officer;
    - (ii) A bid adjudication committee.
  - (d) The heads of the departments will be responsible for; among others:
    - i. Initiating and planning all the procurements and disposals
    - ii. Drafting and packaging all the tender dossier including determination of deliverables and/ or performance indicators and bid adjudication criteria
    - iii. Keeping records of all procurements and disposals in accordance with the provisions of this policy
    - iv. Submitting monthly reports to the Chief Financial Officer.
    - v. Contract closure report including performance monitoring
  - (e) All officials dealing with SCM issues as part of their financial responsibilities are also responsible for implementation of this policy in their day-to-day operations.
- (3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including –

- (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) must be submitted –
- (a) to the accounting officer, in the case of an award by –
    - (i) the chief financial officer;
    - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
    - (i) a manager referred to in subparagraph (2)(c)(iii); or
    - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph shall not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.
- (8) For delegation of powers, Delegation of powers register should be consulted.

**(9)**  
**Oversight role of council**

6. (1) The **Council** reserves its right to maintain oversight over the implementation of this Policy.
- (2) For the purposes of such oversight the accounting officer must –
- (a) (i) within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
  - (ii) Whenever there are serious and material problems in the implementation of this Policy, immediately submit a report **to the council**
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the **Mayor**.

- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.
- (5) Submit to Mayor Quarterly report of bids.
- (6) Report to Council on any serious or material problems in the implementation of the Policy

**Supply chain management unit**

- 7. (1) A supply chain management unit is hereby established to implement this Policy.
- (2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

**Training of supply chain management officials**

- 8. The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

## **CHAPTER 2** **SUPPLY CHAIN MANAGEMENT SYSTEM**

### **Format of supply chain management system**

**9.** This Policy provides systems for –

- (i) demand management;
- (ii) acquisition management;
- (iii) logistics management;
- (iv) disposal management;
- (v) risk management; and
- (vi) performance management.

### **Part 1: Demand management**

#### **System of demand management**

- 10.** (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by **the municipality** support its operational commitments and its strategic goals outlined in the Integrated Development Plan.
- (2) The demand management system must –
- (a) include timely planning and management processes to ensure that all goods and services required by **the municipality** are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature; and
  - (c) provide for the compilation of the required specifications to ensure that its needs are met.
  - (d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

## **PART 2: ACQUISITION MANAGEMENT**

### **System of acquisition management**

11. (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- (a) That goods and services are procured by **the municipality** in accordance with authorised processes only;
  - (b) That expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) That the threshold values for the different procurement processes are complied with;
  - (d) That bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) That any Treasury guidelines on acquisition management are properly taken into account.
- (2) When procuring goods or services contemplated in section 110(2) of the MFMA, the accounting officer must make public the fact that such goods or services are procured otherwise than through the **municipality's** supply chain management system, including –
- (a) the kind of goods or services; and
  - (b) the name of the supplier.

### **Range of procurement processes**

12. (1) Goods and services may only be procured by way of –
- (a) petty cash purchases, up to a transaction value of R500 (VAT included);
  - (b) Verbal quotations for procurements of a transaction value over R500 up to R5 000 (VAT included);
  - (c) Written quotations for procurement of transaction of a value over R5 000 (VAT included) up to R30 000 (VAT included);
  - (d) Formal written price quotations for procurements of a transaction value over R30 000 up to R200 000 (VAT included); accompanied by tax clearance certificate and
  - (e) a competitive bidding process for–
    - (i) Procurements above a transaction value of R200 000 (VAT included); and
    - (ii) The procurement of long term contracts.

(f)

STRUCTURE OF APPROVAL		
GOODS/SERVICES VALUE	PROCUREMENT METHOD MINIMUM	APPROVAL AUTHORITY
R0- R500	Petty cash: one quote	Divisional Manager-SCM
R501- R 5 000	Three verbal quotations of which at least one must be written	Divisional manager of SCM unit
R5 001 – R30 000	Written (three) quotations	Chief Financial Officer / delegated official
R30 001- R200 000	Notice on public notice boards & website (for 7 days, SCM regulation 18) or advertisement via newspapers	Chief Financial Officer
R201 001- R2 million	Competitive bidding process (advertise for at least 14 days in the newspaper & website)	The Bid Adjudication Committee
R2 million- R10 million	Competitive bidding process (advertise for at least 14 days in the newspaper & website)	Accounting officer on the recommendation of the Bid Adjudication Committee
Above R10 million	Competitive bidding process (advertise for at least 30 days in the newspaper and website)	Accounting Officer on the recommendation of the Bid adjudication Committee

(2) The accounting officer may, in writing-

- (a) lower, but not increase, the different threshold values specified in sub-paragraph (1); or
- (b) direct that –
  - (i) verbal quotations be obtained for any specific procurement of a transaction value lower than R5 000;
  - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000; or
  - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.

(3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

#### **General preconditions for consideration of written quotations or bids**

13. A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
- (a) has furnished that provider's –

- (i) full name;
  - (ii) identification number or company or other registration number;
  - (iii) tax reference number and VAT registration number, if any; and
  - (iv) B-BBEE status level certificate, Trust, Consortium or Joint Venture must submit a consolidated B-BBEE status level certificate ( for purposes of claiming points);
- (b) has authorised the **municipality** to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
- (c) has indicated –
- (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

#### **Lists of accredited prospective providers**

14. (1) The accounting officer must –
- (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
  - (b) at least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers and close for a certain period as it will be indicated in the advert;
  - (c) specify the listing criteria for accredited prospective providers; and
  - (d) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.

### **Petty cash purchases**

15. The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this Policy, are as follows –
- (a) the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
  - (b) the maximum number of petty cash purchases or the maximum amounts per month for each manager;
  - (c) any types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and
  - (d) a monthly reconciliation report from each manager must be provided to the chief financial officer, including –
    - (i) the total amount of petty cash purchases for that month; and
    - (ii) receipts and appropriate documents for each purchase.

### **Verbal or written quotations**

16. The conditions for the procurement of goods or services through verbal quotations, are as follows:

- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the **municipality** provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
- (b) to the extent feasible, providers must be requested to submit such quotations in writing;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

### **Formal written price quotations**

17. (1) The conditions for the procurement of goods or services through formal written price quotations, are as follows:
- (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the **municipality**

- (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
  - (d) the accounting officer must record the names of the potential providers and their written quotations.
  - (e) Offers below R30 000 must be awarded based on compliance to specifications, conditions of the contract, ability and capacity to deliver the goods and services at the lowest price.
  - (f) Offers above R30 000 must be awarded based on the preferential point system using the 80/20 system, compliance to specifications and capacity to deliver the goods and services.
- (2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

#### **Procedures for procuring goods or services through verbal quotations and formal written price quotations**

18. The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, is as follows:
- (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
  - (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the **municipality**.
  - (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
  - (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written and formal written price quotations accepted by an official acting in terms of a sub delegation;
  - (e) offers below R200 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
  - (f) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
  - (g) Delegations of powers must to be consulted for quotations and bids.

- (h) The procurement of goods and services between R0 and R5000 falls within the scope of the SCM unit
- (i) The procurement of goods and services between R30 001 and R200 000 will be delegated by the accounting officer to the chief financial officer within the municipality.

### **Competitive bids**

19. (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

### **Process for competitive bidding**

20. The procedures for the following stages of a competitive bidding process are as follows:
- (a) Compilation of bidding documentation by the project manager
  - (b) Finalization and recommendation of the bid document by the bid specification committee
  - (c) Approval of the specification by the CFO
  - (d) Public invitation of bids by SCM or as delegated
  - (e) Site meetings or briefing sessions if required;
  - (f) date  
(g) Handling of bids submitted in response to public invitation as detailed per advert closing  
Compliance evaluation on the date of tender opening by the compliance committee  
(Delegated by the CFO)
  - (h) Evaluation, finalization and recommendation of the bid evaluation report by the bid evaluation committee.
  - (i) Consideration of the evaluation report and final recommendations by the bid adjudication committee.
  - (j) Award of contract by the accounting officer
  - (k) Drafting and signing of service level agreement by corporate services department
  - (l) Administration of contracts
  - (m) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
  - (n) Proper record keeping
  - (o) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

### **Bid documentation for competitive bids**

21. The criteria to which bid documentation for a competitive bidding process must comply, must –
- (a) take into account –
    - (i) the general conditions of contract and any special conditions of contract, if specified;
    - (ii) any Treasury guidelines on bid documentation; and
    - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
  - (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
  - (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
  - (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
    - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
      - (aa) for the past three years; or
      - (bb) since their establishment if established during the past three years;
    - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
    - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
    - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
  - (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

### **Public invitation for competitive bids**

22. (1) The procedure for the invitation of competitive bids, is as follows:
- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the **municipality** or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
  - (b) The information contained in a public advertisement, must include –
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 Million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
    - (ii) a statement that bids may only be submitted on the bid documentation provided by the **municipality**; and
    - (iii) Date, time and venue of any proposed site meetings or briefing sessions.;
- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Be must be submitted in electronic format.

### **Procedure for handling, opening and recording of bids**

23. The procedures for the handling, opening and recording of bids, are as follows:
- (a) Bids–
    - (i) must be opened only in public;
    - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
    - (iii) Received after the closing time should not be considered and returned unopened immediately.
  - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
  - (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and

- (d) The accounting officer must –
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and
  - (iii) publish the entries in the register and the bid results on the website.

#### **Negotiations with preferred bidders**

- 24. (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

#### **Two-stage bidding process**

- 25. (1) A two-stage bidding process is allowed for –
  - (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.
- (4) Turnkey projects are prohibited.

#### **Committee system for competitive bids**

- 26. (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:
  - (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee;
- (2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

- (3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) Paragraph 27, 28 and 29 of this Policy; and
  - (b) Any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

#### **Bid specification committees**

27. (1) A bid specification committee must compile the specifications for each procurement of goods or services by the **municipality**.
- (2) Specifications –
- (a) Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) Must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2011; and
  - (g) The bid specification committee must, in the bid documents indicate if, in respect of a particular bid invitation, bids will be evaluated on functionality and points to be allocated within functionality must be clearly indicated.
  - (h) The conditions of a bid must stipulate that a bidder must score a specified minimum number of points for functionality (contemplated in subsection (g)) to qualify for further adjudication.
  - (i) Must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee is composed of the following officials of the municipality:

- The head of the procuring department
  - The procuring divisional manager
  - Advisor/ consultant (if necessary)
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.
- (5) Tender document prices are pre-determined by the specification Committee looking at the value of the projects also considering the cost of printing the document. Please refer to budget document for prices.

#### **Bid evaluation committees**

28. (1) A bid evaluation committee must –
- (a) Evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) The points system set out in terms of paragraph 29(8-11).
  - (b) Evaluate each bidder's ability to execute the contract;
  - (c) Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
  - (d) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of-
- (a) Officials from departments requiring the goods or services; and
  - (b) At least one supply chain management practitioner of the municipality to ensure compliance with SCM procedures.

#### **Bid adjudication committees**

29. (1) A bid adjudication committee must –
- (a) Consider the report and recommendations of the bid evaluation committee; and
  - (b) Either –
    - (i) Depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or

- (ii) Make another recommendation to the accounting officer how to proceed with the relevant procurement.
- A bid adjudication committee must consist of at least four Senior Managers of the **municipality** which must include –
  - (a) The chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
  - (b) At least one senior supply chain management practitioner who is an official of the **municipality** and
  - (c) A technical expert in the relevant field who is an official, if such an expert exists.
- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5)
  - (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
    - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
    - (ii) Notify the accounting officer.
  - (b) The accounting officer shall –
    - (i) After due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
    - (ii) If the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer must at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days

**30. Preference points system, evaluation of bids, awarding of bids not scoring highest points, cancellation and re-invitation of bids**

➤ Planning and Stipulation of preference point system to be utilized  
An organ of state must, prior to making an invitation for tender-

- (a) Properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for tenders is to be made;
- (b) determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the tenders; and
- (c) determine whether the services, works or goods for which an invitation for tenders is to be made has been designated for local production and content in terms of regulation 9.

➤ **Evaluation of tenders on functionality**

(1) an organ of state must indicate in the invitation to submit a tender if that tender will be evaluated on functionality.

(2) The evaluation criteria for measuring functionality must be objective.

(3) When evaluating tenders on functionality, the-

- (a) Evaluation criteria for measuring functionality;
- (b) Weight of each criterion;
- (c) Applicable values; and
- (d) Minimum quality score for functionality,

must be clearly specified in the invitation to submit a tender.

(4) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.

(5) The bids that have achieve the minimum qualification score for functionality must be evaluated further in terms of the preference point systems.

(6) When evaluating for functionality the following criteria must be used:

- a) For what purpose has the entity been registered for and this purpose is in-line with the bid.
- b) The period which the entity has been registered.
- c) How many previous contracts of a similar nature has the bidder executed?
- d) What is the bank rating of the bidder?
- e) What is the CIDB rating of the bidder for construction bids?
- f) The bidder has the necessary equipment's to execute the bid.
- g) In the event that the bidder does not have all the necessary equipment to execute the contract, will be able to source the equipment's required.
- h) The bidder must have the necessary skilled staff to execute the project.
- i) What percentage of the bid will the bidder going to sub-contract.
- j) Where are the bidders offices located?

(7) The above criteria's to be weighted in the following manner:

- If the entity is registered for the services required, 10 points should be awarded and if not zero points must be awarded
- For the period of which the entity has been in existence
  - (i) 1-2 years awarded 2 points

- (ii) 3-4 years awarded 4 points
  - (iii) 5-6 years awarded 6 points
  - (iv) 7-8 years awarded 8 points
  - (v) 9-10 years awarded 10 points
- The number of previous similar projects executed
  - (i) 1-2 awarded 2 points
  - (ii) 3-4 awarded 4 points
  - (iii) 5-6 awarded 6 points
  - (iv) 7-8 awarded 8 points
  - (v) 9-10 awarded 10 points
- The bank rating of the bidder
  - (i) A rating awarded 10 points
  - (ii) B rating awarded 8 points
  - (iii) C rating awarded 6 points
  - (iv) D rating awarded 4 points
  - (v) E rating and below awarded 2 points
- The CIDB rating of the bidder must be the one indicated in the bid document requirements or higher be awarded 5 points
- The necessary equipment to execute the project
  - (i) Does not have the equipment be awarded 0 points
  - (ii) Has some of the equipment be awarded 5 points
  - (iii) Has all the necessary equipment be awarded 10 points
- In the event that the bidder does not have the equipment to execute the project, will the bidder be able to source the equipment
  - (i) Will not be able to source the equipment be awarded 0 points
  - (ii) Will be able to source some be awarded 5 points
  - (iii) Will be able to source all the equipment be awarded 10 points
- Does the bidder have the necessary skilled staff
  - (i) If the bidder has no necessary skilled staff be awarded 0 points
  - (ii) If the bidder has some of the necessary skilled staff be awarded 5 points
  - (iii) The bidder has all the necessary skilled staff be awarded 10 points
- The ability of the bidder to execute the project without sub-contracting
  - (i) The bidder sub-contracting more than 25% be awarded 0 points
  - (ii) The bidder sub-contracting between 20%-25% be awarded 5 points
  - (iii) The bidder sub-contracting less than 20% be awarded 10 points
- The location of the bidders offices
  - (i) Within Modimolle be awarded 10 points
  - (ii) Within Waterberg District be awarded 8 points
  - (iii) Within Limpopo Province be awarded 6 points
  - (iv) Within RSA be awarded 4 points
- The bidder must attain 60% or more on the points allocated for functionality to be evaluated further on the 80/20 or 90/10 preference point system.
- The above criteria to be applied where applicable

## **8 The 80/20 preference point system for acquisition of services, works or goods up to A Rand value of R1 million**

- (1) (a) The following formula must be used to calculate the points for price in respect of tenders (including price quotations) with a Rand value equal to, or above R30 000 and up to a Rand value R1 000 000 (all applicable taxes included):

$$Ps=80 \frac{Pt - Pmin}{Pmin}$$

Where

Ps = Points scored for comparative price of tender or offer under Consideration;

Pt = Comparative price of tender or offer under consideration; and

Pmin = Comparative price of lowest acceptable tender or tender or offer.

(c) Organs of state may apply the formula in paragraph (a) for price quotations with a value less than R 30 000, if and when appropriate:

Subject to sub-regulation (3), points must be awarded to a tender for attaining the B-BBEE status level of contributor in accordance with the table

B-BBEE STATUS LEVEL OF CONTRIBUTOR	NUMBER OF POINTS
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- (2) A maximum of 20 points may be allocated in accordance with sub-regulation (2).
- (3) The points scored by a tender in respect B-BBEE contribution contemplated in sub-regulation (2) must be added to the points scored for price as calculated in accordance with sub-regulation (1)..
- (6) Only the bid with the highest number of points scored may be selected unless prohibited by any section provided for by this policy.

**9 The 90/10 preference point system for acquisition of services, works or goods with a Rand value above R1 million**

- (1) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R1 000 000 (all applicable taxes included):

$$Ps=90 \frac{Pt - Pmin}{(1-Pmin)}$$

Where

Ps = Points scored for comparative price of tender or offer under Consideration:

Pt = Comparative price of tender or offer under consideration; and

Pmin = Comparative price of lowest acceptable tender or offer.

Subject to sub-regulation (3), points must be awarded to a tenderer for attaining their B-BBEE status level of contributor in accordance with the table below:

B-BBEE STATUS LEVEL OF CONTRIBUTOR	NUMBER OF POINTS
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

- (2) A maximum of 10 points may be allocated in accordance with sub-regulation (2).
- (3) The points scored by a tenderer in respect of the B-BBEE contribution contemplated in sub-regulation (2) must be added to the points scored for price as calculated in accordance with sub-regulation (1).
- (4) Subject to regulation 7, the contract must be awarded to the tenderer who scores the highest total number of points.
- (5) Only the bid with the highest number of points scored may be selected unless prohibited by any section provided for by this policy

#### **Award of contracts to tenders not scoring the highest number of points**

6. (1) A contract may be awarded to a tender that did not score the highest total number of points, only in accordance with section 2 (1) (f) of the PPPFA.

#### **Cancellation and re-invitation of tenders**

7. (1) (a) In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, **all** tenders received exceed the estimated Rand value of R1 000 000, the tender invitation must be cancelled.  
(b) If one or more of the acceptable tenders received are within the prescribed threshold  
On the 80/20 preference point system.  
(2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders receive are equal to, or below R1000 000, the tender must be cancelled.  
(b) If one or more of the acceptable tenders received are above the prescribed threshold of R1000 000, all tenders receive must be evaluated on the 90/10 point system.
  - An organ of state which has cancelled a tender invitation as contemplated in sub –

regulations (1)(a) and (2)(a) must re-invite tender and must ,in the tender documents, stipulate the correct preference point system to be applied .

- An organ of state may prior to the award of a tender ,cancel a tender if
  - (a) due to change circumstances ,there is no longer a need for the services, works or goods requested ;or
  - (b) Funds are no longer available to cover the total envisaged expenditure; or
  - (c) No acceptable tender are received.
- The decision to cancel a tender is in terms of sub-regulation (4) must be published in the Government Tender Bulletin or the media in which the original tender invitation was advertised.

## 10 The 80/20 preference point system for the sale and letting of assets

- (1) The following formula must be used to calculate the points for price in respect of bids with a Rand value equal to, or above R30 000.00 and up to a Rand value of R1 000 000 and which relate to the sale and letting of assets.

$$Ps=80 \frac{Pt - Ph}{(1+ Ph)}$$

Where

Ps = Points scored for price of bid under consideration

Pt = Rand value of bid under consideration

Ph = Rand value of highest acceptable bid

- (2) A maximum of 20 points may be awarded for specific preferential points to a bidder.
- (3) The points scored by a bidder in respect of the goals specified in terms of the Preferential Procurement Policy Framework Act, 2000 must be added to the points scored for price.
- (4) Only the bid with the highest number of points scored may be selected unless prohibited by any section provided for by this policy

## 11 The 90/10 preference point system for the sale and letting of assets

- (1) The following formula must be used to calculate the points for price in respect of bids with a Rand value above R1 000 000 and which relate to the sale and letting of assets:

$$Ps=90 \frac{Pt - Ph}{(1+ Ph)}$$

Where

Ps = Points scored for price of bid under consideration

Pt = Rand value of bid under consideration

Ph = Rand value of highest acceptable bid

- (2) A maximum of 10 points shall be awarded for specific preferential goals.
- (3) The points scored by a bidder in respect of the goals specified in terms of the Preferential Procurement Policy Framework Act 2000, must be added to the points scored for price.
- (4) Only the bid with the highest number of points scored may be selected unless prohibited by any section provided for by this policy

OR

**Award of contract to bid not scoring the highest number of points**

12. Despite subsections 72(4), 73(4), 74(4), 75(4) and 77(8), a contract may, on reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points.

**Cancellation and re-invitation of bids**

13. The municipality may, prior to the award of a bid, cancel a bid if:

- (a) due to changed circumstances, there is no longer need for the goods or services bided for; or
  - (b) funds are no longer available to cover the total envisaged expenditure; or
  - (c) no acceptable bids are received.
  - (d) If there was a deviation or an error in the procurement process.
14. In the event that, in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed the estimated Rand value of R1 000 000, the bid invitation must be cancelled.
15. In the event that, in the application of the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below R1 000 000, the bid must be cancelled.
16. Not more than 25% of the contract maybe sub-contracted.

**General Conditions**

17. (1) The municipality may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.
- (2) Points scored, must be rounded off to the nearest 2 decimals.
- (3) In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points. Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

## **Principles**

18. (1) Preference points stipulated in respect of a bid must include preference points for equity ownership.
- (2) The equity ownership contemplated in subsection (1) must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the bid.
- (3) In the event that the percentage of ownership contemplated in subsection (2) changes after the closing date of the bid, the bidder must notify the municipality and such bidder will not be eligible for any preference points.
- (4) Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with their degree of ownership.
- (5) Subject to subsections (1), (2), (3) and (4), all claims made for equity ownership by a B-BBEE status level of contributor must be considered according to the following criteria:
  - (a) Equity within private companies must be based on the percentage of equity ownership;
  - (b) Preference points may not be awarded to public companies and tertiary institutions;
  - (c) EP = the percentage of equity ownership by a B-BBEE status level of contributor within the business, determined in accordance with subsections (1), (2), (3) and (4).

$$\text{NEP} = \text{NOP} \times \frac{\text{EP}}{100}$$

Where

NEP = Points awarded for equity ownerships by an HDI

NOP = The maximum number of points awarded for equity ownership.

EP = The percentage of equity ownership

within the enterprise or business.

- (6) Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust.
- (7) Documentation to substantiate the validity of the credentials of the trustees must be submitted to the municipality.

- (8) A Consortium or Joint Venture may, based on the percentage of the contract value managed or executed by their B-BBEE status level of contributor members, be entitled to equity ownership in respect of a B-BBEE status level of contributor.
- (9) The number of points scored for a Consortium or Joint Venture must be added to the number of points scored for achieving specified goals.
- (10) The points contemplated in subsection (9) must be added to the points scored for price, in order to establish the total number of points scored.
- (11) Subject to sections 78 and 79, the contract must be awarded to the bid which scores the highest points unless prohibited by any section provided for by this policy
- (12) A person awarded a contract as a result of preference for contracting with, or providing equity ownership to, B-BBEE status level of contributor, may not subcontract more than 25% of the value of the contract to a person who is not a B-BBEE status level of contributor or does not qualify for such preference.
  
- (13) Broad-Based Black Economic Empowerment Status Level Certificates
  - 4.1 Tenderers with annual total revenue of R5 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the Broad-Based Black Economic Empowerment Act, and must submit a certificate issued by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act no. 69 of 1984)) or an accreditation verification agency.
  - 4.2 Tenderers other than Exempted Micro-Enterprises (EMEs) must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating.
  - 4.3 The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.
  - 4.4 The B-BBEE status level attained by the tenderer must be used to determine the number of points contemplated in regulation 8(1) and 9 (1)
  
- 19. Modimolle Local Municipality must award points for preference objectives in accordance with the PPPFA and its regulation, which also incorporate the 80/20 and 90/10 scoring models.
- 20. With the use of scoring models, the accounting officer must determine the ratio of points for HDI development in the achievements of pre-determined goals.
- 21. Modimolle Local Municipality aims at meeting the principles of BEE as stipulated in the BEE Act and will apply general score cards or sector specific Charters where applicable.
- 22. Other socio-economic objectives not addressing the RDP requirements and targeting previously disadvantaged individuals, such as HIV/AIDS, Enterprise Development, EPWP and environmental conditions must be addressed through contract specification or scope of work.

23. In case an award (projects of rand value over R2 million) is made to an Enterprise located outside the district municipality of Waterberg, 25% of the total infrastructure project must be sub-contracted to an enterprise located in the Waterberg district for transfer of skills provided the subcontracted contractor appears on the Modimolle Local Municipality database.

### **Procurement of banking services**

31. (1) A contract for banking services –
- (a) Must be procured through competitive bids;
  - (b) Must be consistent with section 7 or 85 of the Act; and
  - (c) May not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 Days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **Procurement of IT related goods or services**

32. (1) the accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if –
- (a) the transaction value of IT related goods or services required in any financial year will exceed R100 million (VAT included); or
  - (b) The transaction value of a contract to be procured whether for one or more years exceeds R100 million (VAT included).
- (4) If SITA comments on the submission and the **municipality** disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

### **Procurement of goods and services under contracts secured by other organs of state**

33. (1) The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –
- (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (b) there is no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discounts or benefits to do so; and

- (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) Subparagraphs (1)(c) and (d) do not apply if –
- (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
- (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

#### **Procurement of goods necessitating special safety arrangements**

34. (1) The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

#### **Proudly SA Campaign**

35. **The municipality** supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:

- Firstly – suppliers and businesses within the municipality or district;
- Secondly – suppliers and businesses within the relevant province;
- Thirdly – suppliers and businesses within the Republic.

#### **Appointment of consultants**

36. (1) the accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if
- (a) The value of the contract exceeds R200 000 (VAT included); or
- (b) The duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
- (a) all consultancy services provided to an organ of state in the last five years; and
- (b) Any similar consultancy services provided to an organ of state in the last five years.

- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the **municipality**.
- 5 . The Accounting Officer may after the competitive bidding process for the procurement of consultants, develop a panel or database which will be valid for a period not more than three years and used as and when required and only be confined to price comparisons in this regard on a choice of three or more consultants on the database.
- (6) The approval of these quotations will be done by the Accounting office or Chief Financial Officer.

**Deviation from, and ratification of minor breaches of, procurement processes**

- 37. (1) The accounting officer may –
  - (a) Dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - (i) In an emergency;
    - (ii) If such goods or services are produced or available from a single provider only;
    - (iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) Acquisition of animals for zoos and/or nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

### **Unsolicited bids**

38. (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) The person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
- (a) Reasons as to why the bid should not be open to other competitors;
  - (b) An explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account–
- (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor

General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.

- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the **municipality** to the bid may be entered into or signed within 30 days of the submission.

#### **Combating of abuse of supply chain management system**

39. (1) The accounting officer must–
- (a) Take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) Investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
    - (i) Take appropriate steps against such official or other role player or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) Check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) Reject any bid from a bidder–
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the **municipality municipal** or to any other municipality or municipal entity, are in arrears for more than three months; or
    - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the **municipality** or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
  - (e) Reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
  - (f) Cancel a contract awarded to a person if –
    - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
    - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
  - (g) Reject the bid of any bidder if that bidder or any of its directors –

- (i) has abused the supply chain management system of the **municipality** or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Tender Defaulters in terms of Section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (h) Rate service providers according to the service or goods rendered to Modimolle Local Municipality and if the goods or service are not according to the specification or the quality is poor council blacklist the service provider for two years on the list of accredited prospective service providers.
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

### **PART 3: LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT**

#### **Logistics management**

40. The accounting officer must establish and implement an effective system of logistics management, which must include –
- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
  - (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
  - (c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
  - (d) before payment is approved , certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
  - (e) Appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
  - (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
  - (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

#### **Disposal management**

41. (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are as follows:
- (2) Assets may be disposed of by –
- (i) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (ii) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) selling the asset through an auction
- (3) The accounting officer must ensure that –
- (a) Immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;

- (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
- (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
- (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
- (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
- (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

### **Risk management**

- 42.** (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:
- (2) Risk management must include –
- (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;
  - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

### **Performance management**

- 43.** The accounting officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved. Performance management of the contractor and procured goods, services and works should be carried out by the Head of Department initiating the procurement and reported in terms of this policy

## **PART 4: OTHER MATTERS**

### **Prohibition on awards to persons whose tax matters are not in order**

44. (1) No award above R15 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

### **Prohibition on awards to persons in the service of the state**

45. Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy—
- (a) who is in the service of the state;
- (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) a person who is an advisor or consultant contracted with the **municipality**

### **Awards to close family members of persons in the service of the state**

46. The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R5 000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –
- (a) the name of that person;
- (b) the capacity in which that person is in the service of the state; and
- (c) the amount of the award.

### **Ethical standards**

47. ***conduct for supply chain management practitioners and other role players involved in supply chain management*** is hereby established for officials and other role players in the supply chain management system of the **municipality** in order to promote –
- (a) mutual trust and respect; and
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of this Policy –
- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;

- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
  - (d) notwithstanding subparagraph (2) (c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the **municipality** (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to **municipality**
  - (h) must assist the accounting officer in combating fraud, corruption, favoritism and unfair and irregular practices in the supply chain management system; and
  - (a) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including
    - 
    - (i) any alleged fraud, corruption, favoritism or unfair conduct;
    - (ii) any alleged contravention of paragraph 47(1) of this Policy; or
    - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of subparagraphs (2)(d) and (e) -
- (a) must be recorded in a register which the accounting officer must keep for this purpose;
  - (b) by the accounting officer must be made to **[the mayor of the municipality]** who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.
- (5) A breach of the code of ethics must be dealt with as follows -
- (a) in the case of an employee, in terms of the disciplinary procedures of the **municipality** envisaged in section 67(1)(h) of the Municipal Systems Act;
  - (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
  - (c) In all cases, financial misconduct must be dealt with in terms of

**Chapter 15 of the Act.**

**Inducements, rewards, gifts and favours to municipalities officials and other role players**

48. (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) any inducement or reward to the **municipality** for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of this Policy.
- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

**Sponsorships**

49. The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –
- (a) a provider or prospective provider of goods or services; or
  - (b) a recipient or prospective recipient of goods disposed or to be disposed.

**Objections and complaints**

50. Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action.

**Resolution of disputes, objections, complaints and queries**

51. (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
- (a) To assist in the resolution of disputes between the **municipality** and other persons regarding -
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or

- (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

**Note:**

*A parent municipality and a municipal entity under its sole or shared control may for purposes of subparagraph (1) appoint the same person.*

- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must –
  - (a) Strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) Submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
  - (a) The dispute, objection, complaint or query is not resolved within 60 days; or
  - (b) No response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

**Contracts providing for compensation based on turnover**

52. If a service provider acts on behalf of a **municipality** to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the **municipality** must stipulate–
- (a) a cap on the compensation payable to the service provider; and
  - (b) that such compensation must be performance based.

**53. Operationalization**

- (a) To systemise the procurement process, the Municipal Manager shall pursue the development and approval of a standard operating procedure incorporating a generic SCM manual, standard bidding documents, forms and standard evaluation documents.
- (b) The SCM policy will be brought into operation through:
  - Procurement Directives which shall be issued by the SCM Unit from time to time,
  - Procurement delegations issued in terms of section 82 of MFMA; and
  - SCM procedures
- (c) The Operationalization shall be managed by the SCM Unit on a day-to-day basis.

**54. Contract management**

1. Contracts will be managed and their performance in accordance with the signed Service level Agreement and or contract document as outlined in contract management legislations and regulations.
2. They will be managed by heads of Departments of which the services or goods are procured for that department.
3. Contracts will be monitored by way of reports from the service provider or meetings held between the service provider and the user departments. Minutes should be kept if monitored through meetings.
4. A report on skills transfer should be submitted to the municipality where applicable, and certified by the employee who received the skill for authenticity.

**Commencement**

55. This Policy takes effect on the date of the council resolution approving it.